

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

B H & B CONSTRUCTION INC.

Defendant.

----- X

COMPLAINT

Civil Action No.
CV-

The United States of America alleges that:

FIRST: Jurisdiction is conferred upon this Court pursuant to Title 28, United States Code, Section 1345.

SECOND: On information and belief, the Defendant is a New York corporation and has offices within the Southern District of New York at 1432 Bruckner Boulevard, Bronx, NY 10472.

THIRD: This lawsuit is filed for a sum certain due the Plaintiff.

FOURTH: The Defendant owes the United States the sum of \$16,743.40 for civil penalties issued by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) for failure to comply with workplace safety and health standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 650/651 et seq) and regulations 29 C.F.R. 1926, as itemized in the Certificate of Indebtedness, incorporated herein by reference, annexed hereto as Exhibit A.

FIFTH: This claim arises from OSHA inspection # 914516, conducted 6/26/2013

– 7/3/2013 at the Defendant’s work-site located at 1431 Bruckner Boulevard, Bronx, NY 10471.

A copy of the Citation and Notification of Penalty is attached as Exhibit B.

SIXTH: No part of the aforesaid sum has been paid, although demanded.

WHEREFORE, the United States demands judgment against defendant as follows:

1. For the sum of \$16,743.40 plus interest at the rate of 1% per annum (\$0.51 daily) as well as a penalty at the rate of 6% per annum (\$3.09 daily) as itemized in the Certificated of Indebtedness;
2. Post-judgment interest, pursuant to 28 U.S.C. ' 1961 at the legal rate then in effect, from the date of entry of judgment until the judgment is paid in full;
3. Administrative costs of suit; and
4. Such other relief as this Court may deem just and proper.

Dated: New York, New York
July 23, 2019

Respectfully submitted,

BY: /s/ John S. Manfredi
John S. Manfredi
ATTORNEY FOR THE UNITED STATES OF
AMERICA
Manfredi Law Group, PLLC
302 East 19th St. Suite 2A
New York, New York 10003
PH: 347 614 7006
Fax 347 332 1740

Exhibit A



U.S. DEPARTMENT OF THE TREASURY
BUREAU OF THE FISCAL SERVICE
WASHINGTON, D.C. 20227

ACTING ON BEHALF OF
U.S. Department of Labor, Occupational Safety & Health Administration
CERTIFICATE OF INDEBTEDNESS

Debtor Name(s) and Address(es):

B H & B Construction Inc.
1431 Bruckner Boulevard
Bronx, NY 10472

RE: Treasury Claim TRFM1500093602

I certify that the U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) records show that the debtor named above is indebted to the United States in the amount stated as follows:

Principal:	\$ 9,200.00
Interest through 07/23/19*:	\$ 447.12
Penalty fee through 07/23/19*:	\$ 2,636.74
Admin fee:	\$ 20.00
DMS fees:	\$ 3,937.24
DOJ fees:	\$ 502.30

(pursuant to 31 U.S.C. 3717(e) and 3711(g)(6), (7); 31 C.F.R. 285.12(j) and 31 C.F.R. 901.1(f); and 28 U.S.C. 527, note)

TOTAL debt owed as of 07/23/19: \$16,743.40

*NOTE: Per the creditor agency, once the debt is referred to Fiscal Service, interest continues to accrue at the rate of 1% per annum (\$0.51 daily) as well as a penalty at the rate of 6% per annum (\$3.09 daily).

This debt arose in connection with the numerous workplace safety violations of the Occupational Safety and Health Act of 1970 (29 U.S.C. 650/651 et seq.) and OSHA regulations (29 C.F.R. 1926), as noted during the June - July 2013 OSHA inspections of the debtor's work site located at 1431 Bruckner Blvd, Bronx, NY 10471.

CERTIFICATION: Pursuant to 28 USC ss. 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief based upon information provided by the U.S. Department of Labor, Occupational Safety & Health Administration.

X

A handwritten signature in blue ink that reads "Ashleigh Edmonds".

July 23, 2019

Signed by: Ashleigh N. Edmonds

Ashleigh Edmonds
Financial Program Specialist
U.S. Department of the Treasury
Bureau of the Fiscal Service

Exhibit B

U.S. Department of Labor

Occupational Safety and Health Administration
660 White Plains Rd
4th Floor
Tarrytown, NY 10591
Phone: 914-524-7510 Fax: 914-524-7515



Citation and Notification of Penalty

To:

B H & B Construction, Inc.
1431 Bruckner Blvd
Bronx, NY 10471

Inspection Number: 914516

Inspection Date(s): 06/26/2013 - 07/03/2013

Issuance Date: 07/11/2013

Inspection Site:

1431 Bruckner Blvd.
Bronx, NY 10471

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment

to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 07/11/2013. The conference will be held by telephone or at the OSHA office located at 660

White Plains Rd, 4th Floor, Tarrytown, NY 10591 on _____ at

_____. Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET**Inspection Number: 914516**

Company Name: B H & B Construction, Inc.
 Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471
 Issuance Date: 07/11/2013

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 660 White Plains Rd, 4th Floor, Tarrytown, NY 10591**

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

 Signature

 Date

 Typed or Printed Name

 Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

U.S. Department of Labor

Occupational Safety and Health Administration

Inspection Number: 914516

Inspection Date(s): 06/26/2013 - 07/03/2013

Issuance Date: 07/11/2013



Citation and Notification of Penalty

Company Name: B H & B Construction, Inc.

Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.132(d)(1)(i): The employer did not select and have each affected employee use the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment:

On or about 6/26/2013, 1431 Bruckner Blvd.

a) The employees did not utilize personal protective equipment to protect them from the various hazards which they were exposed.

ABATEMENT CERTIFICATION: The employer is required to submit certification of abatement for this item

NOTE: Failure to comply will result in an additional penalty of \$1,000.00 as per 29 CFR 1903.19

Date By Which Violation Must be Abated:

08/06/2013

Proposed Penalty:

\$2000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 914516
Inspection Date(s): 06/26/2013 - 07/03/2013
Issuance Date: 07/11/2013



Citation and Notification of Penalty

Company Name: B H & B Construction, Inc.
Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.176(b): Secure storage. Storage of material shall not create a hazard. Bags, containers, bundles, etc., stored in tiers shall be stacked, blocked, interlocked and limited in height so that they are stable and secure against sliding or collapse:

On or about 6/26/2013, Garage Storage

a) The equipment on the shelves was not securely stored.

ABATEMENT CERTIFICATION: Because abatement of this violation is already documented in the inspection file, the employer does not need to submit certification or documentation of abatement for this violation as normally required by 29 CFR 1903.19

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$1200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 914516
Inspection Date(s): 06/26/2013 - 07/03/2013
Issuance Date: 07/11/2013



Citation and Notification of Penalty

Company Name: B H & B Construction, Inc.
Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.176(c): Housekeeping. Storage areas shall be kept free from accumulation of materials that constitute hazards from tripping, fire, explosion, or pest harborage. Vegetation control will be exercised when necessary:

On or about 6/26/2013, Garage Area

a) There was equipment on the floor causing a tripping hazard.

ABATEMENT CERTIFICATION: Because abatement of this violation is already documented in the inspection file, the employer does not need to submit certification or documentation of abatement for this violation as normally required by 29 CFR 1903.19

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$1200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 914516
Inspection Date(s): 06/26/2013 - 07/03/2013
Issuance Date: 07/11/2013



Citation and Notification of Penalty

Company Name: B H & B Construction, Inc.
Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.178(l)(1)(ii): Prior to permitting an employee to operate a powered industrial truck (except for training purposes), the employer shall ensure that each operator has successfully completed the training required by this paragraph (l), except as permitted by paragraph (l)(5):

On or about 6/26/2013, 1431 Bruckner Blvd.

a) The employees operate forklift/bobcat machines and have not received training as required by the standard.

ABATEMENT CERTIFICATION: The employer is required to submit certification of abatement for this item

NOTE: Failure to comply will result in an additional penalty of \$1,000.00 as per 29 CFR 1903.19

Date By Which Violation Must be Abated:

08/06/2013

Proposed Penalty:

\$2000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 914516
Inspection Date(s): 06/26/2013 - 07/03/2013
Issuance Date: 07/11/2013



Citation and Notification of Penalty

Company Name: B H & B Construction, Inc.
Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.178(m)(3): Unauthorized personnel shall not be permitted to ride on powered industrial trucks. A safe place to ride shall be provided where riding of trucks is authorized:

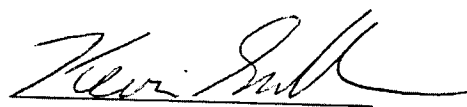
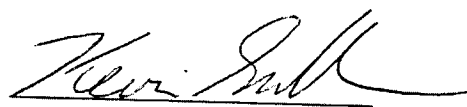
On or about 6/28/2013, Close Ave

a) Two employees were observed riding on the forks of the fork lift truck.

ABATEMENT CERTIFICATION: Because abatement of this violation is already documented in the inspection file, the employer does not need to submit certification or documentation of abatement for this violation as normally required by 29 CFR 1903.19

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$2800.00



Diana Cortez
Area Director

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration
660 White Plains Rd
4th Floor
Tarrytown, NY 10591
Phone: 914-524-7510 Fax: 914-524-7515



INVOICE / DEBT COLLECTION NOTICE

Company Name: B H & B Construction, Inc.
Inspection Site: 1431 Bruckner Blvd., Bronx, NY 10471
Issuance Date: 07/11/2013

Summary of Penalties for Inspection Number	914516
Citation 1, Serious	\$9200.00
TOTAL PROPOSED PENALTIES	\$9200.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.


Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all

penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.


for Diana Cortez
Area Director

7/11/2013
Date